



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 74

[AU Docket No. 19-61, GN Docket No. 12-268, MB Docket No. 16-306; DA 19-477]

Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 104

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: This document summarizes the procedures, terms and conditions, together with the upfront payment amounts and minimum opening bid amounts, for an upcoming auction of construction permits for low power television station (LPTV) and TV translator stations. The Public Notice summarized here also provides an overview of the post-auction application and payment processes governing Auction 104.

DATES: Applications to participate in Auction 104 were required to be submitted prior to 6 p.m. Eastern Time (ET) on July 22, 2019. Upfront payments for Auction 104 must be received by 6 p.m. ET on August 14, 2019. Bidding in Auction 104 is scheduled to start on September 10, 2019.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the Office of Economics and Analytics' Auctions Division at (202) 418-0660. For auction process and procedures, the Auctions Hotline at (717) 338-2868. For LPTV and translator station service questions, Shaun Maher or Hossein Hashemzadeh in the Media Bureau's Video Division at (202) 418-1600. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 104 Procedures Public Notice, released June 6, 2019. The complete text of the Auction 104 Procedures Public Notice, including

attachment and any related document, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The Auction 104 Procedures Public Notice and related documents also are available on the Internet at the Commission's website: www.fcc.gov/auction/104, or by using the search function for AU Docket No. 19-61 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/ecfs/>.

I. GENERAL INFORMATION

1. **Background.** Certain LPTV stations and TV translator stations (collectively referred to as LPTV/translator stations) were displaced by the broadcast incentive auction which resulted in channel reassignments of certain full power and Class A television stations. As a result, a number of LPTV/translator stations were displaced from their channels.

2. Displacement applications for eligible LPTV/translator stations filed during the 2018 Special Displacement Window permitted staff to determine which applicant engineering proposals were mutually exclusive with other applicant proposals. After opportunity to resolve mutual exclusivity (MX) by settlement or technical modification of their engineering proposals, the MX LPTV/translator engineering proposals that remain will be resolved by competitive bidding.

3. The Incentive Auction Task Force (IATF) and Media Bureau (MB), in conjunction with the Office of Economics and Analytics (OEA), released a public notice seeking comment on competitive bidding procedures to be used in Auction 104 to resolve the then-remaining 6 groups of MX applications. A summary of that public notice was published at 84 FR 15167, April 15, 2019.

4. Five entities with pending MX LPTV applications filed six comments and/or reply comments in response to the Auction 104 Comment Public Notice. Several commenters request that the Commission resolve prior to the start of the auction outstanding pleadings that were filed against applicants in the MX groups to provide potential bidders with greater certainty and to encourage settlements. On April 26, 2019, the Media Bureau issued rulings denying the outstanding pleadings. In

light of those actions, comments seeking action on the informal objections are now moot. In addition, one reply commenter argued that the Commission should allow those decisions, and any subsequent petitions for reconsideration or applications for review, to become final before bidding in the auction begins. The Media Bureau, however, has acted on all outstanding pleadings and settlement proposals that involve parties that can become eligible to bid in Auction 104. There will be no delay in bidding to await final resolution of any such legal challenges.

5. Starting on April 18, 2019, the freeze was lifted on the filing of displacement and digital companion channel applications related to LPTV/translator stations. Applicants listed in Attachment A of the Auction 104 Procedures Public Notice were free to continue to enter into and submit settlement agreements for their MX groups up until 6 p.m. on July 22, 2019, the short-form application deadline for Auction 104. At that point, the prohibition on certain communications between auction applicants applies and no further discussions with other Auction 104 applicants regarding the auction, including settlements and bids or bidding strategies, will be permitted until after the close of the auction when the prohibition no longer applies. Thus, after 6 p.m. ET on July 22, 2019, applicants listed in Attachment A will not be able to resolve their application's mutual exclusivity except through the competitive bidding process, including payment of the applicable minimum opening bid.

6. **Relevant Authority.** An applicant listed in Attachment A of the Auction 104 Procedures Public Notice may become qualified to bid only if it complies with the competitive bidding filing, qualification, and payment requirements, and otherwise conforms to applicable rules, policies, and procedures. Accordingly, Auction 104 applicants should familiarize themselves thoroughly with the Commission's general competitive bidding rules (47 CFR part 1, subpart Q), including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Applicants should also familiarize themselves with the Commission's rules relating to the television broadcast service, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the

Auction 104 Procedures Public Notice and any future public notices that may be released in this proceeding.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and it will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

8. **Construction Permits and Entities Eligible to Participate in Auction 104.** Auction 104 is a closed auction; only those individuals or entities listed in Attachment A to the Auction 104 Procedures Public Notice are eligible to complete the remaining steps to become applicants qualified to bid in this auction. Each listed applicant may become a qualified bidder only for the construction permit(s) specified for that applicant in Attachment A of the same public notice. Each of the engineering proposals within each MX group is directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Once mutually exclusive applications are accepted and thus mutual exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid or in fact places a bid.

9. If parties entered into and submitted prior to 6 p.m. on July 22, 2019, a settlement agreement and supporting documentation that is determined to be fully in accordance with the Commission's rules and which completely resolves the mutual exclusivity, that MX group will be removed from the auction and any remaining engineering proposals of that MX group will be processed under standard licensing procedures.

II. APPLYING TO PARTICIPATE IN AUCTION 104

10. **General Information Regarding Short-Form Applications.** An application to participate in Auction 104, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant is legally, technically, and financially

qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.

11. A party whose engineering proposal is listed on Attachment A of the Auction 104 Procedures Public Notice who wished to participate in the bidding in Auction 104 was required to file a short-form application (FCC Form 175) electronically via the Auction Application System prior to 6 p.m. ET on July 22, 2019, following the instructions prescribed in Attachment B to the Auction 104 Procedures Public Notice. Applications could have been filed for Auction 104 at any time beginning at noon ET on July 16, 2019, until the filing window closed at 6 p.m. ET on July 22, 2019. Applicants were strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on July 22, 2019.

12. An applicant must always click on the CERTIFY & SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. The Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction application system. However, there are occasions when auction-related systems may be temporarily unavailable.

13. An applicant bears full responsibility for submitting an accurate, complete and timely short-form application. Each applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B to the Auction 104 Procedures Public Notice and

should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.

14. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

15. Each applicant should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

16. **Authorized Bidders.** An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 for Auction 104.

17. **Construction Permits in Short-Form Application.** Auction 104 applicants will not select permits when filing the FCC Form 175; the permit(s) on which the applicant is eligible to bid will automatically display on the FCC Form 175.

18. **Disclosure of Agreements Relating to Permits Subject to Auction.** An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnership, joint venture, consortium, or agreement, arrangement, or understanding of any kind relating to the LPTV/translator station permits that may be subject to auction, including any agreement that addresses or communicates directly or indirectly bids (including specific prices), bidding strategies (including the specific construction permit(s) or license(s) on which to bid or not to bid), or the post-auction market

structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. For this purpose, a controlling interest includes all individuals or entities with positive or negative de jure or de facto control of the applicant or licensee. In connection with the agreement disclosure requirements, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any agreement, arrangement, or understanding of any kind relating to the permits being auctioned or relating directly or indirectly to bidding at auction with any other applicant, among others, into which the applicant has entered, or any party that it controls or is controlled by it, has entered. An auction applicant that enters into any agreement relating to the licenses being auctioned during an auction is subject to the same disclosure obligations it would be for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

19. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications.

20. In connection with 2015 amendments to the Part 1 competitive bidding rules, the Commission now prohibits any joint bidding arrangement, including arrangements relating to the permits being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits on which to bid, and any such arrangements relating to the post-auction market structure. Joint bidding arrangements include arrangements relating to the construction permits or licenses being auctioned that address or communicate, directly or indirectly, bids or bidding strategies, including arrangements regarding price or the specific construction permits or licenses on which to bid, as well as any such arrangements relating to

the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for transfer or assignment of licenses, provided that such agreements, arrangements or understandings are disclosed on its application and do not both relate to the permits at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

21. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an agreement that has been excepted under the provisions of 47 CFR 1.2105(a)(2)(ix)(A)-(C), and that has been disclosed in that applicant's FCC Form 175, the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

22. Each applicant that is a winning bidder will be required following the close of the auction to disclose in an amendment to its displacement application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed. This applies to any bidding consortia, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the permits being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific permits on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. Failure to comply with the Commission's rules can result in enforcement action.

23. **Ownership Disclosure Requirements.** Each applicant must comply with the uniform part 1 ownership disclosure requirements and provide information required by 47 CFR 1.2105 and

1.2112, and, where applicable, 47 CFR 1.2110. Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in 47 CFR 1.2105 and 1.2112, and, where applicable, 47 CFR 1.2110. Each applicant is responsible for ensuring that information submitted in its FCC Form 175 is complete and accurate.

24. **Foreign Ownership Disclosure Requirements.** Section 310 of the Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. In completing the FCC Form 175, an applicant will be required to certify that it is in compliance with the foreign ownership provisions contained in 47 U.S.C. 310. See 47 CFR 1.2105(a)(2)(vi).

25. **Prohibited Communications.** The rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d) and (e) of the rules apply to each applicant that files a short-form application (FCC Form 175) in Auction 104. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

26. **Entities Subject to 47 CFR 1.2105(c).** An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10% or more of that entity.

27. A party that submits an application becomes an applicant under the rule at the application filing deadline and that status does not change based on later developments. Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an applicant for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

28. **Scope of Prohibition on Communications.** The Commission updated and revised 47 CFR 1.2105(c)'s prohibition on communications by auction applicants in recent years. Significantly, the Commission in 2015 amended 47 CFR 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area or market.

29. In addition to express statements of bids and bidding strategies, the prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.

30. Parties subject to 47 CFR 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant's bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.

31. Subject to the exception described above, 47 CFR 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. Moreover, a communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties.

32. Business discussions and negotiations that are unrelated to bidding in Auction 104 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant in either auction, are not prohibited by the rule. While 47 CFR 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are not auction related,

each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

33. **Communicating with Third Parties.** Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule. For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party. Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants. Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.

34. In the case of an individual, the objective precautionary measure of a firewall is not available. As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. Whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

35. Applicants may discuss the short-form application or bids for specific permits with their counsel, consultant, or expert of their choice before the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the

application, provided that no information pertaining to bids or bidding strategies is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form application deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

36. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in this auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a 47 CFR 1.2105 violation. Similarly, an FCC Form 175 applicant's public statement of intent not to place bids during bidding could also violate the rule.

37. **Section 1.2105(c) Certification.** By electronically submitting its FCC Form 175, each applicant in Auction 104 certifies its compliance with 47 CFR 1.2105(c) and 73.5002(d) of the rules. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

38. **Reporting Requirements.** Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

Procedures for Reporting Prohibited Communications. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Any reports required by 47

CFR 1.2105(c) must be filed consistent with the instructions set forth in the Auction 104 Procedures Public Notice. For Auction 104, such reports must be filed with the Chief of the Auctions Division, OEA, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: auCTION104@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions Division, OEA, FCC, 445 12th Street, SW, Washington, DC 20554.40. A party reporting any communication pursuant to 47 CFR 1.65 or 1.2105(a)(2) or (c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions Division staff about the procedures for submitting such reports.

41. **Compliance with Antitrust Laws.** Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Applicants should note that conduct that is permissible under the Commission's rules may be prohibited by the antitrust laws. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

42. **New Entrant Bidding Credit.** Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full-power noncommercial educational (NCE) stations, on both reserved and non-reserved channels, are included among media of mass communication.

43. In Auction 104, the bidder's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership change, such as resignation of positional interests (officer or director), in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the FCC Form 175 filing deadline. If, for example, on July 22, 2019, an auction applicant has a pending or granted application to assign or transfer control of a media interest, the applicant will not avoid attribution with respect to that interest. To avoid attribution, an applicant must have consummated the transaction before the FCC Form 175 filing deadline. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form application filing deadline. See 47 CFR 73.5007(a). Each prospective bidder is reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately. Each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application.

44. The attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that bidder for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33% of the total asset value of the applicant, even if such an interest is non-voting. The Commission will allow the holder

of an equity or debt interest in the applicant to exceed the above-noted 33% threshold without triggering attribution provided (1) the combined equity and debt in the eligible entity is less than 50%; or (2) the total debt in the eligible entity does not exceed 80% of the asset value, and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. An eligible entity is defined in Note 2(i) of 47 CFR 73.3555.

45. **Application Requirements.** In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants seeking a New Entrant Bidding Credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. In those cases, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25% New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

46. **Bidding Credit Size.** The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25% bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the construction permit proposed in this auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. Any existing media of mass

communications will be considered in the same area as a facility proposed in this auction if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed facility's relevant contour. See 47 CFR 73.5007(b). For purposes of determining whether a construction permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the applicant-specified site coordinates, and with the relevant contour defined in 47 CFR 73.5007(b).

47. Bidding credits are not cumulative; qualifying applicants receive either the 25% or the 35% bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

48. **Provisions Regarding Former and Current Defaulters.** Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 104. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that the applicant, any of its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests, are not in default on any payment for a Commission construction permit or license (including down payments) and that are not delinquent on any non-tax debt owed to any Federal agency. For purposes of this certification, the term affiliate is defined in 47 CFR 1.2110 and the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

49. Under the Commission's revised rule regarding applications filed by former defaulters, an applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 filing

deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. A former defaulter or delinquent who has remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the FCC Form 175 filing deadline in this auction may participate so long as it is otherwise qualified, if the applicant makes an upfront payment that is 50% more than would otherwise be required. For this reason, an applicant must certify under penalty of perjury whether it (along with any of its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions described in 47 CFR 1.2105(a)(2)(xii). For purposes of evaluating the certifications under 47 CFR 1.2105(a)(2)(xi) and (xii), non-tax debt owed to any Federal agency includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund (USF), Telecommunications Relay Services Fund, and the North American Numbering Plan Administration. For purposes of making this certification, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

50. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license as well as any cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within six months after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

51. Applicants should review previous guidance provided on default and delinquency disclosure requirements in the context of the auction short-form application process. Applicants also are

advised to consult with Auctions Division staff if they have questions about delinquency or default disclosure requirements.

52. **Optional Applicant Status Identification.** An applicant owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), or rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify itself regarding this status in filling out its FCC Form 175. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

53. **Minor Modifications to Short-Form Applications.** After the initial application filing deadline, an applicant will be permitted to make only minor modifications to its short-form application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding option (electronic or telephonic). A major modification to an FCC Form 175 application (e.g., change the engineering proposal(s), change the certifying official, change control of the applicant (e.g., any change in ownership or control that would constitute an assignment or transfer of control of the applicant), or claim eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.

54. Any change in control of the applicant will be considered a major amendment. If an applicant makes a major amendment, as defined by 47 CFR 1.2105(b)(2), the major amendment may result in the disqualification of the applicant from participating in the bidding. Even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the prohibitions on certain communications of 47 CFR 1.2105(c) until the down payment deadline for this auction. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

55. **Maintaining Current Information in Short-Form Applications.** Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application in a competitive bidding proceeding. An auction applicant must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or

amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs.

56. An applicant's obligation to make modifications to a pending auction application in order to provide additional or corrected information continues in accordance with the Commission's rules. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

III. PREPARING FOR BIDDING

57. **Due Diligence.** Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permit(s) it is seeking in this auction. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

58. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 104 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act, 47 CFR part 1, subpart I.

59. Each applicant should continue to conduct its own research throughout Auction 104 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each Auction 104 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction. The due diligence considerations mentioned in the Auction 104 Procedures Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

60. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 104. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

61. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

62. **Online Tutorial on Auction Process.** An educational auction tutorial was available starting on July 8, 2019, on the Education tab of the Auction 104 website. This tutorial will remain available and accessible anytime for reference.

63. **Application Processing and Corrections of Deficiencies.** After the deadline for filing auction applications, Commission staff will process all timely submitted applications to determine

whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. Subsequently, a public notice will be issued to identify applications that are complete and those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications. A paper copy of this public notice identifying initial application status will be sent to the contact address listed in the FCC Form 175 for each applicant by overnight delivery. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

64. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by email to auction104@fcc.gov. In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175.

65. After Commission staff review resubmitted applications for Auction 104, Commission staff will release a public notice identifying applicants that have become qualified bidders before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Forms 175 that are deemed timely filed and found to comply with the Commission's competitive bidding rules and other requirements set forth in the Auction 104 Procedures Public Notice, and comply with applicable Commission rules, and which have made a timely and sufficient upfront payment (as described below).

66. **Upfront Payments.** In order to be eligible to bid in this auction, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, February 2003

edition) must be submitted by 6 p.m. ET on August 14, 2019, following the procedures and instructions outlined below and the instructions in Attachment C to the Auction 104 Procedures Public Notice.

67. **Making Upfront Payments by Wire Transfer.** All upfront payments must be made by wire transfer. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's account at the U.S. Treasury. No other payment method is acceptable. The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. All payments must be made in U.S. dollars. Upfront payments for Auction 104 go to a U.S. Treasury account number different from the accounts used in previous FCC auctions. This wire transfer must include the information specified and comply with the instructions provided in the Auction 104 Procedures Public Notice. The beneficiary account number is specific to the upfront payments for Auction 104. Do not use a beneficiary account number from a previous auction.

68. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. To avoid untimely payments, an applicant should discuss arrangements and deadlines with its financial institution (including that financial institution's specific wire transfer requirements) several days before they plan to make the wire transfer, and well ahead of the due date, as well as allowing sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. Contact information for relevant staff is supplied in this public notice.

69. Failure to deliver a sufficient upfront payment as instructed herein by the August 14, 2019, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

70. **Completing and Submitting FCC Form 159.** An accurate and complete Form 159 (February 2003 edition) must be sent to the FCC to accompany each upfront payment. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed Form 159 to the FCC at (202) 418-2843. On the fax cover sheet, write Wire Transfer – Auction Payment for Auction 104. Alternatively, the completed form can be scanned and sent as an attachment to an email to RROGWireFaxes@fcc.gov.

71. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 104 at the U.S. Treasury before the deadline. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the Auction 104 Procedures Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

72. **Upfront Payments and Bidding Eligibility.** The specific upfront payment amounts and bidding units for each construction permit are set forth in Attachment A of the Auction 104 Procedures Public Notice. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permit(s) on which they will bid. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of the Auction 104 Procedures Public Notice for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the Auction 104 Procedures Public Notice, or else the applicant will not be eligible to participate in the auction. The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

73. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of the Auction 104 Procedures Public Notice, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.

74. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that number of bidding units. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the Auction 104 Procedures Public Notice. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

75. Applicants that are former defaulters, as described above, must pay upfront payments 50% greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i). If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

76. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the Auction 104 Procedures Public Notice, the applicant will not be eligible to participate in the auction. This

applicant will retain its status as an applicant in Auction 104 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

77. **Auction Registration.** All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. For security reasons, the mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

78. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on September 4, 2019, a qualified bidder must call the Auctions Hotline. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

79. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auctions Hotline.

80. Each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 104.

81. **Remote Electronic Bidding via the FCC Auction Bidding System.** Only qualified bidders are permitted to bid. All bidding will take place remotely. There will be no on-site bidding during Auction 104. Qualified bidders will be able to place bids in Auction 104 over the Internet using the FCC auction bidding system. Telephonic bidding will be available as well. All telephone calls are recorded. Telephonic bid assistants are required to use a script when entering bids placed by telephone.

Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes

82. The Commission makes no warranties whatsoever with respect to the FCC auction application system and the auction bidding system. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

83. To the extent an issue arises with the Auction System itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. The Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Commission's bidding system. However, there are occasions when auction-related systems may be temporarily unavailable. Should an issue arise that is outside the Auction System or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the Auction System, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the Auction System.

84. **Mock Auction.** All qualified bidders will be eligible to participate in a mock auction on September 6, 2019. The mock auction will enable qualified bidders to become familiar with the FCC

auction bidding system prior to the auction. We strongly recommend that all authorized bidders participate in the mock auction. Details will be announced by public notice.

IV. BIDDING

85. **Simultaneous Multiple Round Auction.** The Commission's standard simultaneous multiple-round auction format will be used for Auction 104. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

86. **Auction Bidding System.** An Auction 104 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of the Auction 104 Procedures Public Notice and (2) the bidder's bidding eligibility measured in bidding units. The FCC auction bidding system will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A of the Auction 104 Procedures Public Notice.

87. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during a bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

88. **Round Structure.** The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which will be released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

89. IATF, MB and OEA retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and

adjust their bidding strategies. The amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, may be changed depending upon bidding activity and other factors, by prior announcement.

90. **Eligibility and Activity Rules.** For Auction 104, the amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the Auction 104 Procedures Public Notice. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A of the Auction 104 Procedures Public Notice as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

91. To ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Note that the bidding units associated with construction permits for which the bidder has removed bids in that round do not count towards current activity.

92. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.

93. In Auction 104, a bidder is required to be active on 100% of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of

an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

94. **Activity Rule Waivers.** Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. In Auction 104, each bidder is provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic.

95. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

96. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the Auction 104 activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

97. Also, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bid

is placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there is no new bid or a proactive waiver will not keep the auction open.

98. **Auction Stopping Rule.** For Auction 104, a simultaneous stopping rule approach will be employed, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

99. Alternative versions of the simultaneous stopping procedure also may be employed for Auction 104. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) The auction would close using a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after announcement of a specified number of additional rounds (special stopping rule). If this special stopping rule is invoked, bids in the specified final round(s) will be accepted, after which the auction will close. (5) The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

100. These options will be exercised only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears

likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, it is likely that there will be an attempt to change the pace of the auction, such as, changing the number of bidding rounds per day and/or the minimum acceptable bids. IATF, MB and OEA retain the discretion to exercise any of these options with or without prior announcement during the auction.

101. **Auction Delay, Suspension or Cancellation.** By public notice and/or by announcement through the FCC auction bidding system, IATF, MB and OEA may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, IATF, MB and OEA, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause us to delay or suspend the auction. This authority will be exercised solely at the discretion of IATF, MB and OEA, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

102. **Bid Amounts.** If the qualified bidder has sufficient eligibility to place a bid on a particular construction permit, eligible bidders will be able to place bids on a given construction permit in each round in any of up to nine pre-defined bid amounts. For each construction permit, the FCC auction bidding system interface will list the 9 acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an upload function that allows bidders to upload text files containing bid information.

103. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described below.

104. During a round, an eligible bidder may submit bids for construction permits (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or

permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round.

105. **Reserve Price and Minimum Opening Bids.** Normally a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. Auction 104 will be conducted without reserve prices for specific construction permits. In contrast to a reserve price, a minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. The specific minimum opening bid amounts for each of the construction permits in Auction 104 are specified in Attachment A to the Auction 104 Procedures Public Notice.

106. **Minimum Acceptable Bids.** For calculation of the 9 acceptable bid amounts for each construction permit, Auction 104 will begin with a minimum acceptable bid increment percentage of 10% and an additional bid increment percentage of 5%. In Auction 104, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—e.g., provisionally winning bid amount * 1.10, rounded using the Commission's standard rounding procedures for auctions as described in the Auction 104 Procedures Public Notice.

107. **Additional Bid Amounts.** In Auction 104, the FCC auction bidding system will calculate the 8 additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5%, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. With an additional bid increment percentage of 5%, the calculation of the additional increment amount is (minimum acceptable bid amount) * (0.05), rounded using the Commission's standard rounding

procedures for auctions as described in the Auction 104 Procedures Public Notice. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3*(additional increment amount)); etc.

108. **Bid Amount Changes.** IATF, MB and OEA retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. Further, IATF, MB and OEA retain the discretion to do so on a construction permit-by-construction permit basis. IATF, MB and OEA also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids could be set. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, then the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. If any such discretion is exercised, bidders will be alerted by announcement in the FCC auction bidding system during the auction.

109. **Provisionally Winning Bids.** In Auction 104, the FCC auction bidding system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

110. The FCC auction bidding system will assign a pseudo-random number to each bid upon submission. In the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids), the tied bid with the highest random number wins the tiebreaker, and

becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

111. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

112. **Bid Removal and Bid Withdrawal.** Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

113. In Auction 104, bidders are prohibited from withdrawing any bid after close of the round in which that bid was placed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

114. **Auction Announcements.** The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

V. POST-AUCTION PROCEDURES

115. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and minor amendments to each winning bidder's pending displacement application filed initially in the 2018 Special Displacement Window.

116. **Down Payments.** As required by 47 CFR 1.2107(b), within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 104 to 20% of the net amount of its winning bids (gross bid(s) less any applicable new entrant bidding credit(s)).

117. **Final Payments.** As required by 47 CFR 1.2109(a), each winning bidder must submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

118. **Long-Form Applications.** Each party eligible to apply for Auction 104 has already filed a displacement application, Schedule C (Schedule for a Construction Permit for a LPTV or TV Translator Broadcast Station) of FCC Form 2100 (Application for Media Bureau Video Service Authorization) during the 2018 Special Displacement Window. A winning bidder will not be required to submit a separate long-form application following close of bidding in Auction 104. A winning bidder, however, will be required to submit minor amendments to their previously filed displacement application by a deadline to be determined after the close of the auction. Amendments must be filed electronically in the Media Bureau's Licensing and Management System (LMS). As required by 47 CFR 73.5006, winning bidders' applications, as amended, will be placed on public notice, triggering the appropriate period for the filing of petitions to deny pursuant to 47 CFR 73.5006. Further instructions will be provided to winning bidders in the auction closing public notice.

119. **Default and Disqualification.** Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, fails to timely amend its pending displacement application, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 104 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or

of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for a default in Auction 104 is 20% of the applicable bid.

120. In the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant. See 47 CFR 1.2109(d).

121. **Refund of Remaining Upfront Payment Balance.** All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. This written authorization must comply with the refund instructions in the Auction 104 Procedures Public Notice.

VI. PROCEDURAL MATTERS

122. **Paperwork Reduction Act.** This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

123. **Congressional Review Act.** The Commission will send a copy of the Auction 104 Procedures Public Notice in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

124. **Supplemental Final Regulatory Flexibility Analysis.** As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601-612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the Broadcast Competitive Bidding Notice of Proposed Rulemaking (NPRM) and other Commission NPRMs (collectively Competitive Bidding NPRMs) pursuant to which Auction 104 will be conducted. Final Regulatory Flexibility Analyses

(FRFAs) likewise were prepared in the Broadcast Competitive Bidding Order and other Commission orders (collectively Competitive Bidding Orders) pursuant to which Auction 104 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the Auction 104 Comment Public Notice, published at 84 FR 15167, April 15, 2019. The Commission sought written public comment on the proposals in the Auction 104 Comment Public Notice, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the Competitive Bidding Orders to reflect the actions taken in the Auction 104 Procedures Public Notice and conforms to the RFA.

125. *Need for, and Objectives of, the Public Notice.* The Auction 104 Procedures Public Notice implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings. More specifically, the Auction 104 Procedures Public Notice provides an overview of the procedures, terms and conditions governing Auction 104 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for the five construction permits for LPTV or TV translator stations available in Auction 104.

126. To promote the efficient and fair administration of the competitive bidding process for all Auction 104 participants, the Auction 104 Procedures Public Notice announces the following policies: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) A specific minimum opening bid amount for each construction permit available in Auction 104; (3) A specific number of bidding units for each construction permit; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity requirement in which a bidder is required to be active on 100% of its bidding eligibility in each round of the auction; (7) Provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (8) Use of minimum acceptable bid amounts and additional acceptable increments, along with a

proposed methodology for calculating such amounts, with IATF, MB and OEA retaining discretion to change the methodology if circumstances dictate; (9) A procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (10) No bid withdrawals are allowed in Auction 104; and (11) Establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

127. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.*

There were no comments filed that specifically addressed the procedures and policies proposed in the Supplemental IFRA.

128. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed procedures as a result of those comments, 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the procedures that were proposed in the Auction 104 Comment Public Notice.

129. *Description and Estimate of the Number of Small Entities to Which the Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. 5 U.S.C. 601(6). In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632.

130. Auction 104 is a closed auction. The specific competitive bidding procedures and minimum opening bid amounts described in the Auction 104 Procedures Public Notice will affect only the 10 individuals or entities listed in Attachment A to the Auction 104 Procedures Public Notice who are

the only parties eligible to complete the remaining steps to become qualified to bid in this auction. These 10 individuals or entities for Auction 104 include firms of all sizes.

131. *Television Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999 and 70 had annual receipts of \$50 million or more. Based on this data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

132. The Commission has estimated the number of licensed commercial television stations to be 1,373. Of this total, 1,270 stations (or about 92.5%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey, Inc. Media Access Pro Television Database in November of 2018, therefore qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed NCE television stations to be 388. These stations are non-profit, and therefore are considered to be small entities. There are also 2,295 LPTV stations, including Class A stations, and 3,654 TV translators. Given the nature of these services, it is presumed that all of these entities qualify as small entities under the SBA small business size standard.

133. The SBA size standard data does not enable us to make a meaningful estimate of the number of small entities who may participate in Auction 104. There are a maximum of 10 individuals or entities that may become qualified bidders in Auction 104, in which applicant eligibility is closed. The

specific procedures and minimum opening bid amounts announced in the Auction 104 Procedures Public Notice will affect directly all applicants participating in Auction 104.

134. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. Our estimate therefore likely overstates the number of small entities that might be affected by this auction because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 104 competitive bidding procedures may apply does not exclude any LPTV or TV translator station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, it is not possible at this time to define or quantify the criteria that would establish whether a specific LPTV station or TV translator applicant is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

135. It is not possible to accurately develop an estimate of how many of these 10 individuals or entities are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services).

136. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased application process for all spectrum auctions, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. More specifically as mentioned

above, small entities and other Auction 104 applicants will be qualified to bid in the auction only if they comply with the following: (1) submission of a short-form application that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the construction permits for which it is designated as an applicant on Attachment A to the Auction 104 Procedures Public Notice. In accordance with the terms of 47 CFR 1.2105(b)(2), an applicant whose application is found to contain deficiencies will have a limited opportunity to bring their application into compliance with the Commission's competitive bidding rules during a resubmission window. All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

137. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the terms of: (1) 47 CFR 1.2107(b) by submitting within 10 business days of release of the auction closing public notice as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 104 to 20% of the net amount of its winning bid or bids; and (2) 47 CFR 1.2109(a) by submitting within 10 business days after the down payment deadline the balance of the net amount for each of its winning bids. Further, as required by 47 CFR 1.2105(c), reports concerning a prohibited communication must be filed with the Chief of the Auctions Division as detailed in 47 CFR 1.2105(c)(4).

138. The processes and procedures adopted in the Auction 104 Procedures Public Notice should minimize the need for small entities to hire attorneys, engineers, consultants, or other professionals. While we are unable to quantify the cost of compliance with the requirements, we do not believe that such costs of compliance will unduly burden small entities. The processes and procedures are consistent with existing Commission policies and requirements used in prior auctions for broadcast construction permits. Thus, some small entities may already be familiar with such policies and requirements and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction

process, the various resources that have been made available, including but not limited to, the availability of a mock auction, remote electronic or telephonic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation while minimizing the need to rely on assistance from outside professionals and consultants.

139. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. See 5 U.S.C. 603(c)(1)-(4).

140. We believe that the steps described below to facilitate participation in Auction 104 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auction 104 should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 104. During the auction, participants will be able to access and participate in the auction via the Internet using a web-based system, or telephonically, providing two cost effective methods of participation avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of an auctions hotline for assistance with auction processes and procedures as well as a technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, small business entities as well as other auction participants, will have access to various other sources of

information and databases through the Commission that will aid in both their understanding and participation in the process.

141. Another step implemented in the Auction 104 Procedures Public Notice that can minimize the economic impact for small entities is the inclusion of the New Entrant Bidding Credit adopted in the 1998 Broadcast Competitive Bidding Order to implement the statutory provisions of section 309(j) regarding opportunities for small, minority- and women-owned businesses. Applicants that qualify for the New Entrant Bidding Credit are eligible to discount the amount of a winning bidder's total bids. The size of a New Entrant Bidding Credit will depend on the number of ownership interests in other media of mass communications that are attributable to the bidder entity and its attributable interest holders. See 47 CFR 73.5007, 73.5008. An applicant can qualify for a 35% New Entrant Bidding Credit if it can certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications or a 25% New Entrant Bidding Credit if it can certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications. Because eligibility for a New Entrant Bidding Credit is not based on the size of the individual or entity requesting the bidding credit, some applicants for Auction 104 that claim eligibility for a New Entrant Bidding Credit may meet the definition of small entity or small business, as defined above.

142. The above mechanisms are made available to facilitate participation in Auction 104 by all qualified bidders and may result in significant cost savings for small business entities that use these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 104, should ensure that the auction will be administered predictably, efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

143. *Notice to Chief Counsel for Advocacy of SBA.* The Commission will send a copy of the Auction 104 Procedures Public Notice, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 604(b).
Federal Communications Commission.

William Huber,

Associate Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2019-15811 Filed: 7/30/2019 8:45 am; Publication Date: 7/31/2019]